

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

BENJAMIN ARCHULETA,)	
)	
Petitioner,)	
)	
vs.)	No. 07-3190-CV-S-ODS-H
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

**REPORT AND RECOMMENDATION OF
THE UNITED STATES MAGISTRATE JUDGE**

Petitioner, an inmate formerly confined at the United States Medical Center for Federal Prisoners, has petitioned this Court for a writ of habeas corpus. The petition has been referred to the undersigned for preliminary review under 28 U.S.C. § 636(b). Because petitioner is entitled to no relief, it will be recommended that leave to proceed in forma pauperis be denied.

As grounds for relief in habeas corpus, the petitioner attempts to challenge the policy of the Bureau of Prisons prohibiting the possession and use of tobacco products by inmates.

There is no constitutional right to smoke in prison. *Grass v. Sargent*, 903 F.2D 1206, 1207 (8th Cir. 1990). Additionally, petitioner is no longer housed at the United States Medical Center for Federal Prisoners.

Counsel for the petitioner has filed a Motion to Withdraw. Because there are no issues presented for which relief is appropriate, the motion is granted. ¹

For the foregoing reasons, it is, pursuant to the governing law and in accordance with Local

¹ Petitioner has 10 days to file exceptions to the Report and Recommendation of the United States Magistrate Judge.

Rule 72.1 of the United States District Court for the Western District of Missouri,

RECOMMENDED that petitioner be denied leave to proceed in forma pauperis, and that the petition herein for writ of habeas corpus be dismissed without prejudice.

/s/ James C. England
JAMES C. ENGLAND, CHIEF
UNITED STATES MAGISTRATE JUDGE

Date: December 26, 2007